BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.	)	
295 North Maple Avenue	)	
Basking Ridge, NJ 70920	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. WT-01-316**
	)	
Sprint Spectrum, d/b/a SPRINT PCS	)	
6160 Sprint Parkway	)	
Overland Park, KS 66211	)	
	)	
Respondent.	)	
	)	

Comments of the Missouri Independent Telephone Company Group

Pursuant to the Commission's Request for Comments Regarding the Petitions for Declaratory Rulings filed by Sprint PCS and by AT&T, the Missouri Independent Telephone Company Group (MITG) files these comments in support of Sprint PCS's Petition for Declaratory Ruling, and in opposition to AT&T's Petition for Declaratory Ruling.

Summary

The MITG sides with Sprint PCS in this dispute. This dispute applies to intraMTA traffic originated by a landline caller and terminating to a Sprint PCS CMRS customer. The MITG has and still is involved in a lengthy dispute in Missouri regarding intraMTA traffic originated by CMRS customers and terminating to the MITG ILECs. While the traffic terminating to the

MITG is the reverse of the traffic in dispute between Sprint PCS and AT&T, the law and intercompany compensation principles are the same.

Access compensation, and only access compensation, can be fairly and uniformly applied when more than two carriers collaborate in originating, transporting, and terminating a call. It is structured to assure proper compensation to the originating and terminating LEC, as well as equal access for the IXCs. Access compensation accommodates both the situation where the originating ILEC is a toll competitor and the situation where the originating ILEC is not a toll competitor.

Reciprocal compensation, and only reciprocal compensation, can be fairly and uniformly applied when two LECs directly compete in a local market. It is structured to assure proper compensation only to the two interconnected carriers who exchange transport and termination services to the other for intercompany calls. Reciprocal compensation is only designed to accommodate that single situation—two local competitors directly interconnect to exchange local traffic. It is not designed to address any role played by a third carrier, an IXC or an ILEC acting as an interexchange carrier in another LEC's exchange. Reciprocal compensation cannot be fairly or uniformly applied where three carriers collaborate to complete a call.

Toll competition between IXCs is different from local competition between LECs. Toll competition is between IXCs and those ILECs that in their capacity as IXCs offer toll service in addition to local service. "Pure" IXCs compete with one another without the necessity of any direct interconnection between them. Their interconnection is with the ILEC. When an ILEC also provides toll, as RBOCs typically do, there is toll competition and a direct interconnection between the IXC and the ILEC. However this competition is structured upon equalized access to the RBOC, with the identical originating access charges applied by the RBOC to all IXCs over different interconnections for different IXCs..

For small rural LECs, such as the MITG companies, that do not provide toll services, the IXC and the LEC are not competitors. The IXC interconnects with the ILEC to compete with other IXCs. The IXC does not compete with the ILEC acting in any IXC capacity.

In a two-carrier reciprocal compensation situation, the LEC originating the call pays the other LEC for transport and termination for completing the call. Reciprocal compensation is an "originating responsibility" type of compensation, as the carrier receiving the end user revenue associated with the origination of the call is responsible for paying for transport and termination services the second LEC provides. It is the responsibility of the originating LEC to procure sufficient revenues from its local end user to cover the costs of transport and termination.

The calls around which this dispute is centered involve three or more carriers. As none of the three are interconnected for purposes of local competition, reciprocal compensation is inappropriate. AT&T is either presubscribed or casually selected by the customer of the originating LEC when the call is dialed. The originating LEC is required by law to deliver this call off to AT&T, without charging the dialing end user. AT&T is sole carrier enabled to charge the dialing end user. As the call is destined for a customer of Sprint PCS, AT&T must either deliver the call over its own facilities interconnecting with Sprint PCS, or hand off the call to another IXC for delivery over its interconnection with Sprint PCS.

In a three carrier collaboration, the justification for reciprocal compensation—that the interconnected carriers are local competitors—does not exist. The IXC by definition is not a local competitor in the originating LEC's exchange. It is a long distance competitor. The originating and terminating LECs likewise are not necessarily local competitors.

In the three carrier analysis, it makes no difference if the IXC involved is a "pure" IXC such as AT&T, or an ILEC performing an IXC function in the exchange of another ILEC. AT&T is required to pay the originating LEC originating access. The originating LEC receives access compensation from AT&T, but no compensation from the originating end user. Where AT&T delivers the call to Sprint PCS over AT&T's facilities, AT&T is required to pay Sprint PCS terminating access. If AT&T hands the call off to another IXC for delivery to Sprint PCS, that IXC must pay Sprint terminating access. It is the responsibility of the terminating IXC to collect sufficient compensation from AT&T to cover the terminating cost. In both situations, as the carrier receiving the originating end user revenue, it is AT&T's responsibility to collect sufficient revenues from the end user originating the call to cover AT&T's costs of transport and termination, whether provided by AT&T's own facilities or contracted via the facilities of another IXC.

"Originating responsibility" works in a three or more carrier analysis only if AT&T is considered the originating carrier. Of course, considering AT&T the originating carrier is consistent with the fact that AT&T receives the originating end user revenues, as that end user is AT&T's customer. Therefore, originating responsibility requires AT&T to pay both the originating and terminating LECs access.

AT&T betrays the underpinnings of reciprocal compensation when it attempts to claim the LEC serving the dialing customer is the "originating carrier", or that AT&T only provides a "transiting" function. It is not necessarily the case that every IXC and every LEC operating in a Major Trading Area are competitors of one another. The mechanism that establishes two LEC's status as competitors of one another is the interconnection agreement itself. Under AT&T's argument, no interconnection agreements would be necessary for any intraMTA calls. There would be no necessity of CMRS providers obtaining interconnection agreements from ILECs. The very vehicle established by law to recognize and establish the terms of local competition—an approved interconnection agreement—would vanish. Instead this traffic could merely be dialed on a 1+ basis, handed off to an IXC, and claimed to be "transited" by the IXC. This would result in a complete ad hoc claim of local traffic, without interconnection agreements. "Transited" traffic might include traffic crossing LATA boundaries, might include traffic transported by two, three, or even four interexchange carriers. "Transited" traffic could even include traffic originated by a CMRS provider not competing whatsoever in the market area served by the LEC to which the call terminates.

All of the FCC rules regarding the development, pricing, and approval of interconnection agreements is premised upon the design of the Act. The Act allows reciprocal compensation to replace access compensation only after approval of an interconnection agreement. The interconnection agreement between the originating and terminating LEC does not apply in the three carrier situation. The interconnection agreement cannot lawfully be compelled, as interconnection agreements are not designed for three carrier collaborations.

Ignoring the requirements of the Act and FCC rules, there is also a conceptual obstacle to attempting to apply reciprocal compensation principles to a three (or more) carrier collaboration. The rationale underlying reciprocal compensation breaks down. Under AT&T's fiction, one must consider the ILEC from whose exchange the call originated as the responsible originating carrier. Yet the dialing parity rules require the ILEC to hand these calls to AT&T. The rules prohibit the originating LEC from charging the end user for this call. The originating LEC is only allowed to charge AT&T originating exchange access. Only AT&T receives the originating end user revenues, not the originating LEC, and not the terminating wireless carrier.

The “transiting” concept is fundamentally at odds with two carrier reciprocal compensation. As will be discussed later, RBOC Southwestern Bell Telephone Company has successfully refused to accept “transited” traffic. The Kansas Corporation Commission has agreed that the notion a LEC can be required to accept “transit” traffic is not set forth in the Act, and that such a concept is at odds with each LEC’s right to negotiate its own direct interconnection arrangements. Therefore no carrier can be forced to accept transit traffic without its express agreement thereto. Sprint PCS cannot be required to accept transit traffic from AT&T.

The Missouri Independent Telephone Group

The MITG is comprised of seven small telephone companies serving rural areas within the state of Missouri.[1] The members of the MITG range in size from a single exchange company serving 380 access lines to an 18 exchange company serving 8,609 access lines. Members of the MITG are rural telephone companies as defined by the Telecommunications Act of 1996.

Save one, all MITG members are, and for decades have been, interconnected with RBOC Southwestern Bell Telephone Company (SWBT). In contrast to the MITG members, SWBT serves approximately 2,750,000 Missouri access lines in 160 exchanges.

Some MITG members operate on a cooperative, member-owned basis. Some are private for-profit corporations. They serve areas where historically the large companies could not be incented to provide service.

Due to the low customer density and high cost of service per access line, the MITG members provide local service to their local customers and exchange access services to interexchange carriers. They do not provide toll service in their exchanges. The cost of originating toll calls in the MITG member exchanges only would make their toll rates unreasonably high. Instead the MITG members rely upon national, statewide, or regional toll carriers with the ability to average the costs of urban and rural toll service. MITG customers are hoped to have available toll services at reasonable rates in reasonable parity to those available in urban areas.

As a result of not providing toll service, MITG companies have two sources of regulated revenue: exchange access and local service. A typical MITG member may have about 65 to 70% of its regulated revenues from access services, with local service contributing the remaining 30 to 35%.

There are two types of IXCs providing interexchange services to the MITG: "Pure" IXCs such as AT&T; and large ILECS such as RBOC SWBT. SWBT is an IXC when it comes to providing interexchange services to the exchanges of the MITG, as in MITG exchanges SWBT is not certificated to operate, and does not operate, as a LEC. By contrast, in its own exchanges SWBT acts both in its capacity as the ILEC and as an IXC.

Missouri History

Between 1990 and 1998 RBOC Southwestern Bell Telephone Company (SWBT) via Missouri tariff offered to wireless carriers LATA wide termination of wireless traffic to wireless carriers. SWBT refused to pay other ILECs terminating compensation for the termination of the wireless traffic terminating to ILECs other than SWBT. The MoPSC in complaint proceedings directed SWBT to pay terminating access on this traffic.

SWBT then revised its tariff to provide termination only to SWBT exchanges, and

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[1] These seven companies are Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

"transiting" to other ILEC exchanges, for which SWBT refused to pay terminating compensation. In approving this tariff, the MoPSC determined that wireless carriers would not send traffic destined for third party ILECs in advance of an approved compensation agreement. The MoPSC subsequently approved interconnection agreements between SWBT and wireless carriers adopting this same determination.

Rural ILECs such as the MITG were refused participation in the negotiation or approval of these agreements, even though by their terms they addressed "transiting" traffic destined for the MITG companies. The wireless carriers violated the terms of the MoPSC Order approving SWBT's tariff, and the terms of the interconnection agreements, by sending to SWBT traffic destined to terminate with the MITG companies in the absence of an approved agreement with the MITG companies. As a result, between February of 1998 and today, over 3 and ½ years, this traffic has been terminating to the MITG, mostly without any compensation being paid.[2]

Some MITG companies continue to bill terminating access rates, as their access tariffs are the only authorized compensation mechanism in place. Other MITG companies had approved in February of 2001 terminating wireless tariffs authorizing them to bill the wireless carriers. Billings under these tariffs have for the most part been unsuccessful.

The wireless carriers have rebuffed MITG efforts to obtain compensation on several fronts: they have continued to send such traffic knowing that the limitations of the SWBT/rural ILEC Feature Group C access common trunk connection would not allow the MITG companies to block this traffic; they have refused to pay access compensation on the basis of their claim access cannot apply to intraMTA traffic, even though it is not known what proportions are intraMTA or interMTA traffic, and even though they sent the traffic in violation

[2] Apparently Sprint PCS has been waiting a similar amount of time for compensation for termination of the traffic from AT&T here.

of MoPSC Orders and Agreements; they have taken the position the MITG companies have consented to "de facto" bill and keep for this traffic; they have refused to negotiate direct interconnection agreements, and have insisted they will only negotiate for an indirect or "transiting" structure; they have taken the position that the MITG companies must pay the wireless carriers for termination of 1+ dialed landline calls originated in MITG exchanges which are terminated to the wireless carriers by the end user's presubscribed or casually selected IXC.

Similarities of Missouri History to Sprint PCS/AT&T Dispute

In both the Missouri history and this dispute, there are certain similarities of issues. First and perhaps foremost is the fact that traffic is being terminated without any sort of compensation while the legal dispute is resolved. It is highly inappropriate for any carrier to pass traffic to another absent an approved vehicle—either a tariff or approved interconnection agreement—predetermining what entity is responsible for compensation and at what rate. It cannot reasonably be suggested that either the federal congress, This Commission, or any state commission, intended the Telecommunications Act of 1996 to allow or even contemplate carriers passing traffic to one another without an applicable compensation mechanism. The MITG believes the Act, the FCC reciprocal compensation rules, and the FCC's Orders are clear that, in the absence of approved reciprocal compensation agreements, access tariffs must continue to apply until superseded by an Interconnection Agreement approved pursuant to the Act.

The second similarity has to do with claims of "transiting" functions. The "transiting" claim in Missouri gave both SWBT and wireless carriers an excuse to send traffic without compensation responsibilities having been predetermined. AT&T utilizes similar contentions in trying to avail itself of reciprocal compensation instead of access compensation. The MITG believes that "transiting" notions deprive MITG companies of their equal right as ILECs under the Telecommunications Act of 1996 to have direct interconnections upon which to provide for the exchange of traffic with wireless carriers. Accepting a transiting function provided either by a pure IXC such as AT&T, or by an RBOC in its capacity as an IXC in the exchanges of the MITG, deprives the MITG companies of any real opportunity to exchange reciprocal traffic with wireless carriers.

The third similarity is that in Missouri, the MITG claims it is due terminating access compensation from the delivering IXC pursuant to their access tariffs until and unless their access tariff is superseded by the terms of an approved direct interconnection agreement. In this dispute, Sprint PCS also claims that when an IXC delivers terminating traffic to Sprint PCS as a LEC for ultimate termination to its CMRS subscribers, Sprint PCS is entitled access compensation from AT&T, the delivering IXC. The MITG believes Sprint PCS's position in this regard is correct.

A fourth similarity is the notion of "defacto bill and keep" compensation. In Missouri, and originating wireless carrier claims that the MITG companies are bound by a defacto bill and keep compensation arrangement, even though no interconnection agreement containing reciprocal bill and keep has been approved by any state commission. Here, although the case focuses on landline to wireless calls, AT&T makes the same contention that Sprint PCS is bound by defacto bill and keep. The MITG disagrees with AT&T. Bill and keep may be appropriate under FCC rules when there is a reasonable balance of traffic, and when it is contained in an approved interconnection agreement. There is no such thing as "defacto", or unapproved, bill and keep.

The appropriate access/reciprocal compensation model

There is no dispute that, for interMTA traffic, access compensation is appropriate. This case has to do with the applicability of access or reciprocal compensation to intraMTA traffic delivered via a three carrier collaboration.

The MITG respectfully suggests that the only structure that can work, and indeed the structure enacted by the Telecommunications Act of 1996, is that reciprocal compensation applies only when used between two directly interconnected carriers who have negotiated and had approved an interconnection agreement containing reciprocal compensation. Any time the traffic is carried by an IXC between the originating and terminating LEC, the IXC owes terminating access to the terminating LEC.

This structure recognizes that the access regime was not eliminated. This structure recognizes that, in situations where an IXC collaborates with two or more carriers, access continues to apply. As demonstrated by the Missouri history, and as demonstrated by this dispute, under any other structure premised upon "transiting" or "indirect interconnection" roles, the situation becomes hopelessly blurred and inconsistent.

As a LEC, Sprint PCS is not required to accept local compensation for "transited" traffic. The same is true for the MITG companies as ILECs. All LECs are entitled to insist upon access compensation until there is an interconnection agreement constructed upon a direct interconnection superseding access compensation. Similarly, as a LEC, Sprint PCS is not required to engage in reciprocal compensation for traffic originated in one LEC's area by AT&T as an IXC, and delivered to Sprint PCS for termination, a three carrier collaboration. Sprint PCS is entitled to charge access.

AT&T claims Sprint PCS is obliged to accept reciprocal compensation on an indirect or "transiting" basis. Yet in Kansas the largest ILEC in the southwest region—SWBT—successfully opposed the establishment of such an obligation. SWBT itself refuses to accept "transit" traffic from carriers indirectly interconnected with SWBT. As SWBT is by far the largest and most dominant ILEC in the southwest, it makes no sense for SWBT to have a preferential rule applicable solely to SWBT, and not to Sprint PCS.

The obligations to interconnect and negotiate reciprocal compensation agreements contained in §§ 251 and 252 of the Telecommunications Act of 1996 apply equally to all ILECs, whether they be RBOC SWBT or a small MITG company. These obligations do not vary by size of the ILEC. The MITG companies are not relegated to an inferior status by the Act.

In Kansas interconnection agreement proceedings, SWBT refused to accept indirect or "transited" traffic. The basis of SWBT's refusal was that it could not be required to accept "transit" traffic as it preferred direct interconnections, and that being forced to accept "transit" traffic would allow the transiting carrier to interject itself into the efforts of SWBT to establish direct interconnection agreements with carriers. The Kansas Corporation Commission agreed with SWBT, holding:

> "The Arbitrator agrees with SWBT that local exchange carriers have a duty to establish reciprocal compensation arrangements for the transport and termination of traffic. 47 U.S.C. § 251(b)(5). Consistent with that obligation, no other carrier should be authorized to interject itself into the interconnection arrangements of the local exchange carrier, without its agreement. There is no indication in the statute that transit services are considered. Clearly, parties may accept calls on a transiting basis, but SWBT has indicated its unwillingness to do so and has expressed a preference for negotiation its own agreement. SWBT's last best offer is adopted." [3]

The MITG members desire no more or less than SWBT. They desire direct

[3] See August 7, 2000 Arbitrator's Order 5: Decision in the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to section 252 of the Telecommunication Act of 1996, Docket No. 00-TCGT-571-ARB, at pages 25-26.

interconnections on separate trunks be ordered whereupon the appropriate business relationships can be established prior to traffic flow, whereupon traffic can be measured, jurisdictionalized, the appropriate compensation rate applied, the terms of billing and collection established, and provisions for disconnection for non-payment made enforceable. The MITG notes that other RBOCs apparently refuse or have announced their position to refuse to provide the transiting of traffic to rural ILECs.[4] The "transiting theory AT&T attempts to impose to the detriment of Sprint PCS here is not acceptable.

Experience has proven to the MITG that "transiting" allows other carriers to interject themselves into, and indeed prevent, LECs from establishing their own interconnections. If the statute imposes no transiting obligation upon SWBT, it imposes no such obligation upon Sprint PCS or upon the MITG. Although carriers may *voluntarily* accept compensation on an indirect or transiting basis, they are not compelled to do so.

The very same considerations apply to Sprint PCS in this case. Requiring Sprint PCS to accept "transit" traffic from AT&T places AT&T in a position of usurping the effective control Sprint PCS has of its own competitive decisions. It is not a correct statement of ILEC obligations.

The Act does not require an ILEC to involuntarily accept local compensation arrangements constructed upon indirect interconnections. The FCC has repeatedly held that the term "interconnection" refers solely to the physical linking of two networks, and *not* to the exchange of traffic between networks.[5] The FCC recently explained:

[4] The August 21, 2001 Comments of Sprint Corporation in CC Docket No. 01-92, at pages 33 and 34, footnote 19, indicate that in Maryland Verizon refuses to provide indirect interconnection or transiting.
[5] See Attachment B *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., Complainants, v. AT&T Corporation, Defendant*, File No. E-97-003, FCC 01-84, *Memorandum Opinion and Order*, rel. Mar. 13, 2001, ¶ 23.

> In the *Local Competition Order*, we specifically drew a distinction between "interconnection" and "transport and termination," and concluded that the term "interconnection," as used in section 251(c)(2), does not include the duty to transport and terminate traffic. Accordingly, section 51.5 of our rules specifically defines "interconnection" as "the linking of two networks for the mutual exchange of traffic," and states that this term "does not include the transport and termination of traffic."[6]

Likewise, in *Comptel v. FCC,* 117 F.3d 1068 (8th Cir. 1997), the court held that the term "interconnection" in section 251(c)(2) refers to a physical linking between the requesting carrier and the ILEC.

The Act itself and the implementing FCC rules also make clear that interconnection agreements can only be required of ILECs via a direct physical interconnection between the wireless carrier's facilities to those of the ILEC. For example, 47 USC 251(c)(2) imposes the duty upon ILECs to provide, for the facilities and equipment of any requesting telecommunications carrier, **interconnection with the local exchange carrier's network**–(B) at any technically feasible **point within the carrier's network**. (emphasis added)

47 USC 251 (c) (1) imposes the duty upon ILECs to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b). The duty to establish **reciprocal compensation** arrangements is contained in subsection (b)(5). This subsection mandates that reciprocal compensation is for the **transport** and **termination** of telecommunications. (emphasis added)

The FCC's relevant rule defines the term "transport" as occurring via a direct interconnection between two carriers:

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[6] *Id.*

> *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 252(b)(5) of the Act ***from the interconnection point between the two carriers*** to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.

47 C.F.R. §51.701(c)(emphasis added)

Under the FCC's definition, "transport" takes place between ***two carriers*** and begins at "***the interconnection point between the two carriers***." However, under the indirect interconnection, or "transiting" structure postulated by AT&T, more than two carriers are involved, and the first and third carriers have no point of interconnection between them from which the "transport" can be measured. Therefore, there is no "transport" under the FCC's definition presently taking place for the traffic here in dispute.

AT&T fails to consider the definition of "transport". Because these calls do not fit the FCC's definition of "transport and termination," they cannot fit under the reciprocal compensation clause. Therefore, access rates must apply.

As with the definition of "transport," the FCC's definition of "local telecommunications traffic" addresses only the context of a direct interconnection between two carriers. The FCC defines "local telecommunications traffic" as:

> (1) Telecommunications traffic between **a** LEC and **a** telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or
>
> (2) Telecommunications traffic between **a** LEC and CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

See 47 CFR 51.701(b).

The FCC defines the wireless carrier's local calling scope as calls between a single LEC and a CMRS provider within the MTA. However, this definition does not address calls between a CMRS provider and interexchange carriers ("IXCs") such as AT&T Long Distance, MCI/WorldCom, or SWBT for that matter[7] nor does it define calls between a CMRS provider and multiple LECs or calls from a CMRS provider that are "transited" through a LEC or some other carrier to another LEC. Although the FCC defined intraMTA calling as local, the FCC also made clear that is was not upsetting the existing access regime for interexchange traffic.[8]

The FCC's *First Report and Order*[9] indicates that interconnection agreements were to be between two directly interconnecting carriers, who are competing local providers. The following enumerated paragraphs of that decision demonstrate that reciprocal compensation is intended only when two carriers collaborate to complete a call and access charges are intended when three carriers collaborate to complete a call:

> ¶ 1033. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications.
>
> ¶ 1034. Access charges were developed to address a situation in which three carriers—typically, the originating LEC, the IXC, and the terminating LEC—collaborate to complete a long-distance call□. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which *two carriers* collaborate to complete a local call□.We find that the reciprocal compensation provisions of section 251(b)(5) for transport and

[7] In MITG exchanges the only role of SWBT is as an IXC. SWBT does not there operate as a LEC.
[8] See e.g. *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 96-325, *First Report and Order*, rel. Aug. 1, 1996, ¶30 ("Nothing in this *Report and Order* alters the collection of access charges paid by an interexchange carrier under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an interexchange carrier, either directly or through service resale.")

[9] *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 96-325, *First Report and Order*, rel. Aug. 1, 1996.

> termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.
>
> ¶ 1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport", for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between *the two carriers* to the terminating carrier's end office switch that directly serves the called party
>
> ¶ 1040. We define "termination," for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carriers' end office switch (or_equivalent facility) and delivery of that traffic from that switch to the called party's premises we conclude in the interconnection section above that *interconnecting carriers* may interconnect at any technically feasible point. We find that this sufficiently limits LECs' ability to disadvantage *interconnecting parties* through their network design decisions.
>
> ¶ 1042 Section 251(b)(5) specifies that LECs and *interconnecting carriers* shall compensate one another for termination of traffic on a reciprocal basis.
>
> ¶ 1043 Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges, *unless it is carried by an IXC.* We conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.
>
> ¶ 1044 As an alternative, LECs and CMRS providers can use the *point of interconnection between the two carriers at the beginning of the call* to determine the location of the mobile caller or called party.
> (emphasis added and internal citations omitted)

This language from the FCC's *First Report and Order* indicates that reciprocal compensation is intended only for collaborations between two carriers and not three. Where, as here, SWBT in its IXC capacity in MITG service areas carries the traffic, access applies.

Other recent FCC decisions support this view as well. In 2000, the FCC decided a complaint case involving several paging carriers and local exchange carriers (LECs). In that case, the FCC observed:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. **Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier**.[10]

This language could not be any clearer: where AT&T as an IXC is involved in carrying an intraMTA wireless call, access charges can and do apply. For Sprint PCS, where AT&T carries such traffic as an IXC, access applies.

"*De facto* bill and keep" does not exist

The contention of the AT&T that Sprint PCS is bound by a "*de facto*" bill and keep compensation arrangement relies upon a compensation mechanism that does not exist. Neither the Act nor the FCC's Rules make any provision or even any mention of "*de facto*" bill and keep as some type of default compensation mechanism. The Act has no "default" reciprocal compensation mechanism. The mechanism is that the parties agree to or have arbitrated for them. Either way it is contained in an approved agreement.

The Commission can only impose a bill and keep arrangement upon a specific finding that two companies' costs are symmetrical and the traffic between the two carriers is reasonably balanced and is expected to remain so. The FCC's Rules provide:

> A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).[11]

[10] *TSR Wireless, LLC, et al. v. US West Communications, Inc., et al.*, File Nos. E-98-13 et al., *Memorandum Opinion and Order*, FCC 00-194 (2000 FCC LEXIS 3219) rel. June 21, 2000, p. 19, para. 31 (emphasis added)(footnotes omitted)

While bill and keep can be ordered in an interconnection agreement arbitration phase upon such a showing, apparently that has not happened between AT&T and Sprint PCS. Well it should not, as AT&T is not a local competitor entitled to request a local interconnection agreement.

Wherefore, the MITG respectfully suggests that the Commission make its ruling in favor of Sprint PCS and against AT&T on the basis of the foregoing.

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[11] 47 CFR 51.713(b)